

RALPH H. AND JACQUELINE L. RAINWATER

IBLA 77-332

Decided August 8, 1977

Appeal from decision of the Socorro District Manager, Bureau of Land Management, Socorro, New Mexico, denying request for renewal of grazing lease NM 2-128 for a period of 10 years. NM 2-77-1.

Affirmed.

1. Grazing Leases: Renewal--National Environmental Policy Act of 1969: Environmental Statements

Where by final judgment a court has ordered that until an appropriate environmental impact statement is issued, the Bureau of Land Management will issue authorization for livestock grazing only on an annual basis, a grazing lease can be renewed only on an annual basis, even though the grazing unit has been pledged as security for a bona fide loan.

APPEARANCES: Ralph H. and Jacqueline L. Rainwater, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Ralph H. and Jacqueline L. Rainwater were the lessees under a 10-year grazing lease, NM 2-128, which expired September 3, 1976. Prior to the expiration date the Rainwaters filed a renewal application with the Socorro District Office, Bureau of Land Management (BLM), Socorro, New Mexico, requesting that a new lease be issued for 10 years from the date of expiration of NM 2-128.

By letter dated September 9, 1976, the Rainwaters were informed that their request for renewal of NM 2-128 for a period of 10 years was rejected. As the basis for the denial BLM stated:

(1) BLM policy at the present prohibits the issuing of lease renewals for more than one (1) year until the

necessary Environmental Impact Statements have been prepared, and (2) 43 CFR 4125.1-1(n) states in part * * * A grazing lease or lease renewal may be issued for any period not in excess of 10 years * * *.

The Rainwaters filed a protest of the denial with BLM on October 1, 1976. The Rainwaters explained that their entire ranch had been pledged as collateral for a loan and that failure to renew the lease for the requested time period might jeopardize the loan and force them out of the ranching business. The Rainwaters did not feel that the lack of an Environmental Impact Statement should foreclose their receipt of a 10-year lease. They also directed BLM's attention to the decision of Administrative Law Judge Robert W. Mesch in Hat Ranch, Inc., dated February 3, 1975, in which Judge Mesch ordered BLM to issue a 10-year renewal grazing permit to Hat Ranch.

By letter-decision dated January 20, 1977, the Socorro District Manager, BLM, denied the Rainwater's protest. In addition to reiterating the two grounds listed in his earlier decision denying the request for renewal, the District Manager stated two additional reasons:

(3) the regulations allow for discretion in the issuance of term permits (43 CFR 4125.1-5(b), 1/ and (4) in National Resources Defense Council v. Morton, 388 F. Supp. 829 (D.D.C. (1974)), final judgment entered June 18, 1975, the court held that until an appropriate Environmental Impact Statement is issued, the Bureau will issue authorization for livestock grazing only on an annual basis, and that a grazing permit can be renewed for only one year.

The Rainwaters were informed of their appeal rights and they filed an appeal indicating that their reasons for appealing were identical to those set forth in their letter of protest dated September 22, 1976.

The resolution of this appeal is dictated by the Board's decision, Hat Ranch, Inc., 27 IBLA 340, 83 I.D. 542 (1976), appeal pending, Hat Ranch, Inc. v. Andrus, C.A. 76-668M, D.C.N.M. (filed December 2, 1976). In that case the Board reversed the decision of Administrative Law Judge Robert W. Mesch, dated February 3, 1975.

1/ The use of the word "permits" by the District Manager was apparently inadvertent. 43 CFR 4125.1-5(b) specifically refers to the renewal of grazing leases pledged as security for loans.

Judge Mesch held that BLM was required to renew Hat Ranch's 10-year grazing permits for another 10-year period because the original permits were pledged as security for a bona fide loan, and denial of 10-year renewals would impair the value of the grazing unit. In reversing, the Board stated that BLM was bound by the court order in National Resources Defense Council v. Morton, 388 F. Supp. 829 (D.D.C. 1974), final judgment entered on June 18, 1975. The Board in quoting from the order stated, Hat Ranch, Inc., supra at 357:

The order provided the following:

7. Each EIS (environmental impact statement) contemplated by the agreement will discuss in detail "livestock grazing activities" and all reasonable alternatives thereto. "Livestock grazing activities" as used in this Order shall mean all existing or proposed livestock grazing, all grazing use authorizations issued or contemplated to be issued by BLM as well as those substantial activities which are supportive of and related to livestock grazing administered by BLM, such as fencing, livestock water development, spraying, chaining, seeding, and brush removal.

8. Until an appropriate EIS is completed, the Federal Defendants will adhere to the current policy of limiting authorizations for livestock grazing on any given area to an annual authorization basis, to the extent allowed by law. [Emphasis in original.]

The BLM interpreted the NRDC decision by issuing Instruction Memorandum No. 75-407, August 22, 1975, in which the Director, BLM, stated:

Although the court order will require a substantial effort on the part of the Bureau's personnel, the order itself will have little impact on the ongoing range program as it relates to our grazing authorizations. The court action does not prohibit or alter the issuance of licenses or leases at this time. Current term permits and leases will continue uninterrupted; however, all renewals will be on an annual basis until the necessary EIS for the allotment or lease area has been completed and a decision has been made concerning future livestock use on the area. * * *

The Board concluded in Hat Ranch, Inc., that pursuant to the court's order the Ranch's grazing permits could only be renewed on an annual basis.

The present case involves the request for a renewal of a section 15 grazing lease while the Hat Ranch case was concerned with the renewal of section 3 grazing permits; however, such a distinction does not affect the outcome of this appeal. The court's order in NRDC is applicable to both section 15 leases and section 3 licenses and permits. As such, grazing leases, as well as permits and licenses, may only be renewed on an annual basis. The issuance of 10-year leases and permits has not been foreclosed. The issuance of such has been provided for in the Federal Land and Policy Management Act of October 21, 1976, 43 U.S.C. § 1752. However, at present BLM continues to follow the policy of annual renewals, as set forth by the Director, BLM, in Organic Act Directive No. 77-9, dated January 25, 1977, which states:

The Federal Land Policy and Management Act of 1976 (BLM Organic Act) provides for the issuance of 10-year grazing permits and leases. However, there is not enough time to prepare and implement regulations in regard to issuing these permits and leases before the beginning of the new grazing year on March 1, 1977. Therefore, all grazing authorizations for the 1977 grazing year will be issued on an annual basis in accordance with the policy set forth in Instruction Memo No. 75-407, dated August 22, 1975. Current term permits and leases will continue uninterrupted; however, all renewals will be on an annual basis.

Therefore, as a matter of law we find that appellants' grazing lease may only be renewed on an annual basis.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman

Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

